

# U.S. Hemp Roundtable

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250 West Main Street, Suite 2800, Lexington, KY 40507

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Kentucky Cabinet for Health and Family Services  
Department for Public Health  
275 East Main Street  
Frankfort, KY 40601

Re: Public Comments to 902 KAR 45:190

To whom it may concern:

We are deeply grateful to your agency, as well as to Governor Andy Beshear and his senior advisor, Rocky Adkins, for your responsiveness to issues we raised this summer about the need for regulatory clarity concerning the retail sale of hemp-derived cannabidiol (CBD) as a dietary supplement and additive to foods and beverages. The regulations you have promulgated at 902 KAR 45:190 provide explicit legal protection for the retail sale of ingestible CBD products, as well as critical regulatory protections for the health and safety of CBD consumers. We applaud you for once again putting Kentucky at the vanguard of national hemp policy.

We do, however, want to draw your attention to a few remaining issues with the regulations, and are hopeful that you would be willing to amend the regulations to ensure the greatest opportunity for Kentucky hemp farmers and small businesses, as well as the strongest protections and greatest options for CBD consumers:

1. Section 2 (1) requires parties seeking to “manufacture, market, sell or distribute” CBD products to obtain an “Application for Permit to Operate a Food Plant or Cosmetic Plant.” Such a permit would not seem relevant to a retailer who sells CBD, or to an out-of-state manufacturer who must comply with its own state’s permitting processes. Accordingly, we suggest the following edits to that section:

A person **located in Kentucky** seeking to manufacturer, market , sell, or distribute a hemp-derived CBD ingestible or cosmetic products shall submit an Application for Permit to Operate a Food Plant or Cosmetic Manufacturing Plant, incorporated by reference in 902 KAR 45:160, to the department. **Entities that only sell or distribute hemp-derived CBD ingestible or cosmetic products and do not manufacture such products, and do not add CBD to ingestible products onsite, are not required to obtain a permit.**

2. Section 3(e) requires a statement that the CBD product complies with federal law concerning THC concentration. We want to be sure that the following statement which complies with federal law and other state laws would be sufficient: **“Contains no more than 0.3% THC”**
3. Section 3(g) could potentially be read to require that a CBD product sold in Kentucky must be produced in Kentucky. From our previous discussions, we assume this is a drafting error, and to fix this, we suggest the edit below. If indeed this was intentional, we strongly recommend that it be adjusted as below as well: Such a rule would be inconsistent with Kentucky

law, would deny Kentucky consumers access to popular products, and could lead to a trade war with other states that could damage the ability for Kentucky farmers and businesses to sell their products to other state markets.

The Kentucky Hemp or Kentucky Proud logo or similar marking ~~that denotes~~, **provided** the product was produced in Kentucky.

4. Since there are numerous methods of tamper-proof sealing of products, and innovation in this area is always contemplated, we suggest the following edit to Section 3 (3):

Each container of ingestible or cosmetic hemp-derived CBD product shall bear ~~either~~ **a tamper evident seal such as** a foil seal on the inside or a plastic sealant on the outside.

Please don't hesitate to contact me if you have any questions or would otherwise like to discuss. Thanks again for your attention to these important issues for Kentucky farmers and businesses.

Sincerely,



Jonathan Miller  
General Counsel, U.S. Hemp Roundtable

Cc: Rocky Adkins  
Leanne Applegate  
Kelli Rodman  
Julie Brooks  
Donna Little

# 2020 U.S. HEMP ROUNDTABLE

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